Jeli ak Naga & Ors v Tung Huat Pelita Niah Plantation Sdn Bhd & Ors and another case

HIGH COURT (MIRI) — SUIT NO MR-21–5 OF 2011 AND ORIGINATING SSUMMONS NO 24–44 OF 2010(MR)
STEPHEN CHUNG J
15 AUGUST 2014

Civil Procedure — Stay of execution of judgment — Special circumstances — Whether applicants shown special circumstances existed why stay should be granted — Whether merits of an appeal against judgment were not special circumstances warranting grant of stay

Following a joint hearing of the abovementioned civil suit and the originating summons ('OS'), the High Court ruled that (a) the plaintiffs in the civil suit had acquired native customary rights ('NCR') to 380 hectares ('the NCR land') out of the 3,361 hectares of land comprised in a property ('Lot 2') owned by the first defendant in the suit ('Tung Huat'); (b) in accordance with Adat Iban 1993, the residents of Rumah Tinggi, Rumah Balau, Rumah Rajit and Rumah Jambai could not sell, assign or transfer the NCR land to the defendants in the OS as the latter were not Iban and did not belong to the communities of the longhouses comprised in the NCR land; (c) the NCR land was to be excluded and excised from Lot 2 and the perimeter and area of the NCR land was to be confirmed by a ground survey; and (d) Tung Huat as the registered owner of Lot 2 was entitled to recover possession of Lot 2 excluding the NCR land. The defendants in the OS (who had purportedly bought the NCR land from the residents) and the plaintiffs in the civil suit appealed against the decision to the Court of Appeal pending the hearing of which they filed respective applications to stay the execution of the High Court's judgment. The grounds for the applications were, inter alia, that the appeals would be rendered nugatory if stay was not granted.

Held, dismissing the stay applications:

(1) Based on the evidence, the High Court had determined that the plaintiffs in the civil suit failed to establish that they had acquired NCR over the 3,361 hectares of land in Lot 2. Tung Huat, being the registered owner of Lot 2, could not be prevented from entering its land except for the 380 hectares of NCR land the plaintiffs had acquired or inherited. Tung

Huat, before, during and after the trial had given an undertaking it would not destroy the plaintiffs' longhouses or crops if they were situated inside Lot 2 pending the determination of the appeals. Therefore, there was no merit in the contention that the appeals would be rendered nugatory if the plaintiffs were successful in the appeals (see paras 14–15).

(2) The onus was on the applicants to establish the existence of special circumstances to justify the grant of a stay of execution. The merits of their respective appeals were not special circumstances to warrant the grant of a stay (see paras 12–13).

[Bahasa Malaysia summary

Berikutan pendengaran bersama guaman sivil dan saman pemula ('SP') yang disebut di atas, Mahkamah Tinggi memutuskan bahawa (a) plaintif-plaintif dalam guaman sivil telah memperolehi hak adat anak negeri ('HAAN') kepada 380 hektar ('tanah HAAN tersebut') daripada 3,361 hektar tanah yang terdapat di dalam hartanah ('Lot 2') yang dimilik oleh defendan pertama dalam guaman tersebut ('Tung Huat'); (b) mengikut Adat Iban 1993, penduduk-penduduk Rumah Tinggi, Rumah Balau, Rumah Rajit dan Rumah Jambai tidak boleh menjual, menyerahkan atau memindahkan tanah HAAN kepada defendan-defendaan dalam SP kerana defendan-defendan bukan orang Iban dan bukan tergolong kepada komuniti rumah panjang yang terdapat dalam tanah HAAN tersebut; (c) tanah HAAN hendaklah dikecualikan dan dipotong daripada Lot 2 dan ukuran panjang dan kawasan tanah HAAN disahkan oleh ukur bumi; dan (d) Tung Huat sebagai pemilik berdaftar Lot 2 berhak untuk mendapatkan balik milikan Lot 2 kecuali tanah HAAN. Defendan-defendan dalam SP tersebut (yang didakwa membeli tanah HAAN daripada penduduk-penduduk) dan plaintif-plaintif dalam guaman sivil merayu terhadap keputusan kepada Mahkamah Rayuan sementara menunggu pendengaran permohonan-permohonan masing-masing yang difailkan mereka untuk menangguhkan pelaksanaan penghakiman Mahkamah Tinggi. Alasan untuk permohonan adalah, antara lain, bahawa rayuan-rayuan akan menjadi tidak berguna jika penangguhan tidak diberikan.

Diputuskan, menolak permohonan penggantungan:

(1) Berdasarkan atas keterangan, Mahkamah Tinggi telah menentukan bahawa plaintif-plaintif dalam guaman sivil gagal untuk membuktikan bahawa mereka telah memperolehi HAAN ke atas 3,361 hektar tanah dalam Lot 2. Tung Huat, sebagai pemilik berdaftar Lot 2, tidak boleh dihalang daripada memasuki tanahnya kecuali untuk 380 hektar tanah HAAN yang plaintif-plaintif telah perolehi atau mewarisi. Tung Huat, sebelum, semasa dan selepas perbicaraan telah memberikan pengakuan yang ia tidak akan memusnahkan rumah panjang atau tanaman plaintif-plaintif jika mereka berada dalam Lot 2 sementara menunggu penentuan rayuan-rayuan tersebut. Oleh itu, tidak terdapat merit dalam

hujahan bahawa rayuan-rayuan akan menjadi tidak berguna jika plaintif-plaintif adalah berjaya dalam rayuan-rayuan tersebut (lihat perenggan 14–15).

(2) Beban adalah ke atas pemohon-pemohon untuk membuktikan kewujudan keadaan khas untuk menjustifikasi pemberian penggantungan pelaksanaan. Merit rayuan masing-masing bukan keadaan khas untuk mewajarkan pemberian penggantungan (lihat perenggan 12–13).]

Notes

For cases on special circumstances, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 8489–8500.

Cases referred to

Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257, FC (refd)

Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd [2002] 3 MLJ 49, CA (refd)

Legislation referred to

Rules of Court 2012 O 55 r 7

Leslie Linton (Battenberg & Talma Adv) in Suit No MR-21–5 of 2011 for the plaintiffs.

Rajesh Jethi (Jethi & Assoc) in Originating Summons No 24–44 of 2010 for the plaintiff.

Rajesh Jethi (Jethi & Assoc) in Suit No MR-21–5 of 2011 for the first defendant.

Ivy Suli (State Attorney General's Chambers) in Suit No MR-21–5 of 2011 for the second, third and fourth defendant.

Janting Antalai (Ali Basah & Partners) in Originating Summons No 24–44 of 2010 for the defendants.

Stephen Chung J:

[1] There are two applications heard together. On 28 February 2014, after the joint trial of the OS and suit between the parties, the court ruled that according to Adat Iban 1993 the residents of Rh Tinggi, Rh Balau, Rh Rajit and Rh Jambai could not sell, assign or transfer the NCR land within Lot 2 Block 9 Bukit Kisi Land District ('Lot 2') to the first or other defendants in the OS action. The court ruled that the OS defendants being not Iban and did not belong to the communities of these longhouses could not legally purchased or acquired the NCR land within Lot 2.

[2] The court has also ruled that the plaintiffs in the suit have acquired NCR over 380 hectares of the land inside Lot 2, that the 380 hectares are to be excluded and excised from Lot 2 and that the perimeter and area of the 380 hectares in Lot 2 would have to be confirmed by a ground survey to be jointly carried out by the plaintiffs and the defendants.

[3] In encl 81 in the OS action, the first to the fifth defendants applied that the execution of the judgment delivered on 28 February 2014, that Tung Huat being the registered owner of Lot 2 be entitled to recover and have possession of Lot 2 (except the 380 hectares shown in exh D42), and that all actions or proceedings pursuant to the judgment be stayed until after the full and final determination of the appeal filed by the first defendant to the fifth defendant.

[4] In encl 181 in the suit, the plaintiffs therein also applied that: (a) the execution of the judgment to the extent that the plaintiffs do not have any native customary rights over the Lot 2 (except the 380 hectares shown in exh D42) and that all actions or proceedings pursuant to the judgment be stayed until after the full and final disposal of the appeal to the Court of Appeal by the plaintiffs; and (b) that the execution of the judgment which was jointly tried giving and or entitling Tung Huat to recover and have possession of Lot 2 (except the 380 hectares shown in exh D42) and all actions or proceedings pursuant to the judgment in the said OS be stayed until after the full and final disposal of the appeal to the Court of Appeal by the first to fifth defendants in the said OS.

[5] The grounds of these applications are as follows: (i) they have on 10 March 2014 appealed against the judgment delivered on 28 February 2014; (ii) the appeals will be rendered nugatory and they will suffer substantial injustice if the judgment is not stayed pending the determination of the appeals; (iii) there are in existence special circumstances that warrant a stay of execution of or proceedings of the judgment; (iv) the continuation of the proceedings or execution of the judgment will severely prejudice them which cannot be compensated with costs; (v) there are merits in the appeals; and (vi) in the event a stay of execution is not granted, they cannot be returned to their original position or be compensated by damages or costs thereby rendering their appeals nugatory.

[6] TR Rajit in his affidavit affirmed that the location of their longhouse and graveyard are within the perimeter of Lot 2 and that these were confirmed by another GPS reading of the coordinates of the longhouse and graveyard carried out by Yusuf bin Abdullah (PW12) on 13 March 2014, after the judgment has been delivered. He submitted that in the event possession of Lot 2 is obtained by Tung Huat, then the longhouse and graveyard would likely be destroyed and they could not be returned to their original position or be compensated by

damages and costs thereby rendering their appeals nugatory.

[7] The second, third and fourth defendants in the suit submitted that the applications to stay should not be granted and that no substantial injustice will be caused to the applicants by the refusal of the grant of stay. It was submitted that in the event the appeals are allowed the applicants could be compensated for their loss. They submitted that based on their survey, these longhouses are outside the boundary of Lot 2, that the court has made its findings as such and therefore there was no merit in the submissions of the applicants that Rh Rajit and the graveyard were inside Lot 2 which were misleading and misconceived.

[8] On the affidavits filed, Tung Huat has given an undertaking not to destroy the longhouses and the crops planted by the plaintiffs ie the residents of the longhouses if they are within Lot 2 pending the determination of the appeals in the Court of Appeal. Tung Huat affirmed that it never sought to prevent or prohibit the plaintiffs from farming within Lot 2, even prior to the court proceedings. Tung Huat affirmed that instead it has assisted the plaintiffs in the suit by improving the roads inside its plantation leading to their respective longhouse and has provided employment opportunities to the residents of these longhouses inside the plantation.

[9] Tung Huat affirmed that its intention was to evict the OS defendants who had purchased the NCR land from the residents of the longhouse. Tung Huat submitted that the OS defendants could not and did not acquire the NCR land from the residents and that it was the OS defendants who had instigated the residents to oppose Tung Huat in the court proceedings. It submitted that the applicants have not shown that there are special circumstances which warrant a stay of the execution of the judgment.

[10] Tung Huat submitted that as the registered owner of Lot 2, it would be unfair and prejudicial to stay the execution to prevent it to continue to enter, manage and harvest the oil palm fruits which it has planted within Lot 2 except the 380 hectares of NCR land which the court has ruled that the plaintiffs have acquired.

[11] Tung Huat has submitted that the parties are unable to carry out the joint survey pursuant to the judgment to determine the exact perimeter of the 380 hectares because plaintiffs and the OS defendants have objected to the ground survey to be carried out. Tung Huat submitted that therefore the applications for stay should be refused.

[12] It is trite that a successful litigant should not be deprived of the fruits of a judgment unless there are special circumstances to justify a stay of execution. An appeal shall not operate as a stay of execution. The grant or refusal of a stay pending appeal is at the discretion of the court depending on the facts and circumstances set out in the applications for stay. The onus is on the applicants to establish the existence of special circumstances to justify the grant of a stay of execution. The reasons must relate to the enforcement of the judgment and must be deposed to in the affidavits filed in support of the applications for stay. The paramount consideration governing an application for a stay is that the appeals, if successful, should not be rendered nugatory: *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 and *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49.

[13] The High Court has made its findings of facts and has delivered its judgment based on the evidence adduced in the trial. The applicants submitted that another GPS survey carried out by them after the trial has confirmed that the longhouse and graveyard are inside Lot 2. This survey is not admissible and could not be used to support their contention or to contradict the findings of the court and there was no application to admit fresh evidence: see O 55 r 7. Whether the judgment of the court is correct or otherwise is for the Court of Appeal to determine at the appeals. The merits of the appeals do not amount to special circumstances which warrant a stay of the appeals.

[14] The evidence showed that Lot 2 contained 3,361 hectares of land. Based on the evidence adduced the court has ruled that the plaintiffs in the suit have acquired only 380 hectares of land inside Lot 2. Based on the evidence adduced the plaintiffs have not established that they have acquired NCR over the 3,361 hectares of land over Lot 2. Tung Huat being the registered owner of Lot 2 should not be prevented from entering Lot 2 except from the 380 hectares of NCR land acquired or inherited by the plaintiffs.

[15] Tung Huat before, during and after the trial has given an undertaking not to destroy their long houses or crops if they are situated inside Lot 2, in particular pending the determination of the appeals. Therefore there is no merit that the appeals will be rendered nugatory if they win the appeals.

[16] For the reasons given, the applications for stay are dismissed with costs of RM750 to be paid jointly by the applicants to Tung Huat and RM750 to the second, third and fourth defendants.

Stay applications dismissed.

Reported by Ashok Kumar